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Referendum: The Appropriations Exception in Nebraska: *Lawrence v. Beermann*, 192 Neb. 507, 222 N.W.2d 809 (1974)

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Note

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Lawrence v. Beermann, 192 Neb. 507, 222 N.W.2d 809 (1974).

I. INTRODUCTION

The referendum process has been defined as "the submission of laws . . . to the voting citizens for their ratification or rejection, these laws first having been passed upon by the people's representatives . . . ."[1] It was primarily used during the nineteenth century to settle questions arising in certain troublesome areas of state law, such as the location of state capitals,[2] and for approval of state constitutions.[3] The late nineteenth and early twentieth centuries witnessed a broadened use of the referendum, reflecting the growth of the Progressive movement in the United States.[4] The increased use was justified by the belief that direct popular legislation would overcome the legislative abuses of the time.[5] Statutory law was subjected to the referendum process in addition to the traditionally referable matters.

The Nebraska Constitution excludes only one type of statute from submission to the referendum process. This limitation appears in Article III, section 3:

> The second power reserved is the referendum which may be invoked, by petition, against any act or part of an act of the Legislature, except those making appropriations for the expense of the state government or a state institution existing at the time of the passage of such act.

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1. E. OBERHOLTZER, THE REFERENDUM IN AMERICA 9 (1893).
2. *Id.* at 51-85.
3. *Id.* at 35.
4. H.M. Hart & A.M. Sacks, The Legal Process: Basic Problems in the Making and Application of Law 687 (1958) (mimeograph).
5. For an early and highly critical view of this development, see Campbell, *The Initiative and Referendum*, 10 MICH. L. REV. 427 (1912). Supportive of maximizing the reserved powers of initiative and referendum is Comment, *The Scope of the Initiative and Referendum in California*, 54 CALIF. L. REV. 1717 (1966). For a discussion of general limitations on the use of referendum, see Olson, *Limitations and Litigation Approaches: the Local Power of Referendum in Federal and State Courts—A Michigan Model*, 50 J. URBAN L. 209 (1972).

Concern over the effect of potential reference of appropriation measures underlies this limitation. The first source of concern is the resulting uncertainty of whether the measure will be approved by the voters. Uncertainty also arises from delaying the effective date of the bill even if subsequently approved.[6] A more fundamental concern, however, was expressed by James Madison in 1787—that of the division of society.[7] Submission of measures requiring revenue raised through taxation would tempt the voter to reject an appropriation for his immediate financial welfare at the expense of vital governmental activities.

Recent passage and submission to the referendum process of Legislative Bill 772[8] [hereinafter "L.B. 772"], which established and funded a system of increased state aid to public schools, emphasized the difficulty in determining when the exception of Article III, section 3 applies to a particular statute. This problem was addressed by the Nebraska Supreme Court in *Lawrence v. Beermann*.[9] This Note will consider the court's analysis of the issues and the implications of the decision for future legislation.

II. ANALYSIS

Lawrence sought to enjoin the Secretary of State from placing L.B. 772 on the November 1974 general election ballot for referendum. He contended the statute was a legislative appropriation for the expense of state government or an existing state institution, and therefore the proposed referendum was unconstitutional. The supreme court affirmed the district court's dismissal of the petition. While the holding was correct, the analysis employed by the court in its per curiam opinion failed to provide guidance in under-

6. NEB. CONST. art. III, § 3 provides in relevant part:
> When the referendum is invoked, as to any act or part of act, other than emergency acts or those for the immediate preservation of the public peace, health or safety, by petition signed by not less than ten per cent of the electors of the state, distributed as aforesaid, it shall suspend the taking effect of such act or part of act until the same has been approved by the electors of the state.

7. Madison's fear of division over monetary matters was acute:
> So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions, and excite their most violent conflicts. But the most common and durable source of factions, has been the various and unequal distribution of property.

THE FEDERALIST No. 10, at 59 (J. Cook ed. 1961) (J. Madison).

8. L.B. 772, 83d Neb. Leg., 2d Sess. (1974).
9. 192 Neb. 507, 222 N.W.2d 809 (1974).

standing the proper scope of the exception to the referendum power.

L.B. 772 generally provided for the establishment of the Public School Support Trust Fund,[10] from which the state was to meet the increased financial burden it has assumed in the area of education.[11] The bill set forth the method for determining the state's funding commitment for the 1975-1976 and 1976-1977 school years[12] and allotted specific sums of money from the fund to aid in specified problem areas of school financing.[13] The State Board of Education was required to certify the amount to be raised through taxation to cover expenditures authorized by the act.[14] Repeal of the School Foundation and Equalization Act, governing current state aid to the public school system, was to become effective September 1, 1976.[15]

The *Lawrence* court failed to articulate clearly the requirements of the Article III, section 3 exception to the referendum power. The method of analysis suggested to the court by the appellant and discused below was apparently ignored. Yet its careful application would have provided sorely needed clarification of the proper scope and application of this exception. To find an act that was qualified for the exception, the analysis required affirmative answers to three cumulative questions: (1) Was L.B. 772 an "appropriation" measure; (2) If it was an appropriation measure, was it for "expenses;" (3) If it was an appropriation for expenses, was it for the expenses of "state government or a state institution" in existence at the time the act was passed.[16]

A. "Appropriations"

The court's initial finding was that L.B. 772 was not an appropriation bill within the meaning of Article III, section 3. The court perceived a failure to set apart from the public revenue a certain sum of money as required by the Constitution of Nebraska.[17] Instead the court viewed L.B. 772 as establishing a new scheme for taxing and financing local public school districts. The first question

10. L.B. 772 § 3, 83d Neb. Leg. Sess. (1974).
11. *Id.* §§ 4, 6-8.
12. *Id.*
13. *Id.* §§ 5, 9, 10, 13.
14. *Id.* § 15.
15. *Id.* § 24.
16. Brief for Appellant at 12, Lawrence v. Beermann, 192 Neb. 507, 222 N.W.2d 809 (1974).
17. NEB. CONST. art. III, § 25 provides in part: "No money shall be drawn from the treasury except in pursuance of a specific appropriation made by law . . . ."

for the *Lawrence* court, and for legislators who may seek to avoid the referendum, lies in the meaning of the term "appropriations."

The constitutional meaning of "appropriation" was given early consideration in *State ex rel. Norfolk Beet-Sugar Co. v. Moore.*[18] Moore, the state auditor, refused to pay a bounty to a sugar manufacturer, in part because he believed there was no legal appropriation out of which he could pay it. The act establishing the bounty designated the amount to be paid per pound of sugar, specified the manner of determining the amount manufactured, and directed payment to qualifying applicants, but set no maximum amount to be paid under the program. The court provided the following definition: "[T]o 'appropriate' is to set apart from the public revenue a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money, and no more, for that object and for no other."[19] The unlimited availability of bounty for the production of sugar was not "certain," and the bill thus failed to meet the constitutional requirement of specificity. In noting the defect, the court stated: "An appropriation may be specific . . . when its amount is to be ascertained in the future from the collection of the revenue. It cannot be specific when it is to be ascertained only by the requisitions which may be made by the recipients."[20] L.B. 772, like the bounty bill in *Moore*, established a framework for determining the necessary appropriation in future years. In addition, however, L.B. 772 included a provision setting aside from the total amount taken from the Public School Support Trust Fund three specific allocations of five million dollars to alleviate specific problems of school financing.[21] These sections clearly complied with the specificity requirement outlined in *Moore*,[22] and the *Lawrence* court's failure to mention them in its opinion illustrates the lack of a systematic approach in its analysis.

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18. 50 Neb. 88, 69 N.W. 373 (1896). Constitutional exceptions to the referendum process vary among jurisdictions. Frequently included is an exception for appropriation measures. *See, e.g.*, Annot., 146 A.L.R. 299 (1943). However, in view of differences in wording and theories of constitutional interpretation, comparisons of the exceptions in various jurisdictions is of limited value and is not undertaken by this Note.
19. *Id.* at 96, 69 N.W. at 376.
20. *Id.* at 99, 69 N.W. at 377.
21. L.B. 772 §§ 5, 9, 10, 13, 83d Neb. Leg. Sess. (1974).
22. A second source of difficulty encountered by the bounty bill in *Moore* was the time period covered. The act expressly provided that it would remain in effect for three years, exceeding the constitutional time limitation. 50 Neb. at 100, 69 N.W. at 377. This problem is discussed in the text accompanying notes 24-29 *infra.*

The Nebraska Supreme Court again considered the meaning of "appropriations" in *Rein v. Johnson*.[23] Suit was brought to enjoin the expenditure of funds from the State Assistance Fund for purposes other than assistance. It was alleged that the act establishing the fund was a continuous appropriation for assistance purposes, consisting of all revenue from defined tax sources. The claim failed for two reasons. First, a continuing appropriation of the nature suggested by the appellant would violate the constitutional time restriction.[24] The purpose of the restriction was to force all governmental departments to appear regularly before the legislature to obtain funds, thus ensuring closer fiscal control.[25] A continuing appropriation was obviously inconsistent with this purpose. The same question arose in *Lawrence* with regard to the provisions of L.B. 772. The language of the section containing the constitutional time limitation had been altered in 1972, however, to exclude specific mention of it.[26] The trial court in *Lawrence* interpreted the 1972 amendment as simply recognizing that the legislature now meets in annual sessions. The language "[e]ach Legislature shall make appropriations for . . . expenses . . ."[27] was viewed as preserving the time limitation.[28] The supreme court did not directly address the issue, although the court's language implies that it concurs with the district court's conclusion.[29]

23. 149 Neb. 67, 30 N.W.2d 548 (1947), *cert. denied*, 335 U.S. 814 (1948).
24. NEB. CONST. art. III, § 22 in effect at the time the dispute arose in Rein v. Johnson provided: "Each Legislature shall make appropriations for the expenses of the Government until the expiration of the first fiscal quarter after the adjournment of the next regular session, and all appropriations shall end with such fiscal quarter."
25. 149 Neb. at 77, 30 N.W.2d at 555.
26. NEB. CONST. art. III, § 22 applicable to Lawrence v. Beermann read:
> Each Legislature shall make appropriations for the expenses of the Government. And whenever it is deemed necessary to make further appropriations for deficiencies, the same shall require a two-thirds vote of all the members elected to the Legislature. Bills making appropriations for the pay of members and officers of the Legislature, and for the salaries of the officers of the Government, shall contain no provision on any other subject.

27. *Id.*
28. Lawrence v. Beermann, No. 289, at 36 (Lancaster County Dist. Ct., filed Sept. 30, 1974).
29. It appears on the face of Legislative Bill 772 that no appropriation in the constitutional sense was intended because the act, by its terms, sets up a funding provision, providing for contributions, and provides that the act shall not become effective until September 1, 1976.

192 Neb. at 508, 222 N.W.2d at 810 (1974). A similar inference can be drawn from another recent decision, in which the court noted that if the bill intended to remain in effect through ensuing years was an appropriation, it "may well be unconstitutional." Stahmer v. State, 192 Neb. 63, 66, 218 N.W.2d 893, 895 (1974).

A second reason given by the *Rein* court for refusing to enjoin the use of money from the State Assistance Fund for purposes other than assistance was that the word "appropriated" as used in the statute did not conform to the constitutional meaning. The term meant, instead, that identified funds should be paid into the state treasury, and, from there, administratively channeled to the Fund for assistance purposes. The following distinction was drawn: "The purpose or design of an appropriation bill is to make provision for lawfully taking money out of the state treasury as distinguished from lawfully putting money into the state treasury, there to be allocated to a particular fund . . . ."[30]

This criticism was not applicable to L.B. 772. After the State Board of Education had certified the amount of tax revenue needed to fund the act, the State Board of Equalization and Assessment was to adjust the sales and income tax rate to meet the need. The Board would then certify to the State Treasurer the percentage of total revenue to be deposited to the credit of the Public School Support Trust Fund.[31] The money was not to be placed in the general fund and then administratively allocated, as was the case with the State Assistance Fund in *Rein*. This absence of administrative allocation is essential in meeting the distinction drawn by the court in *Rein*.[32] A requirement that succeeding legislatures order allocation of revenue into the Fund would establish a continuing appropriation with accompanying constitutional difficulties.[33] The drafters of L.B. 772 avoided this pitfall by eliminating the need for administrative allocation.

The initial step in qualifying for the exception to the referendum power is thus a perilous one. The term "appropriation" embodies several essential elements. The sum of money set aside must be specific. The exact amount need not be known at the time of the act's passage, but must be ascertainable in the future from a specified revenue source and not solely from the requests of recipients. Second, the appropriation power of each legislature extends only to the end of the first fiscal quarter after adjournment of the next regular session. The vitality of this element has not been directly addressed by the court since a change in the constitutional provision, but is reasonably inferred from the court's language.[34] Further, funds must be allocated to specific budgetary items.[35] Fi-

30. 149 Neb. at 78, 30 N.W.2d at 556.
31. L.B. 772 §§ 16, 18, 83d Neb. Leg. Sess. (1974).
32. *See* note 30 and accompanying text *supra*.
33. *See* notes 24-29 and accompanying text *supra*.
34. *See* note 29 and accompanying text *supra*.
35. NEB. CONST. art. III, § 25.

nally, the statute must provide for removal of funds from the state treasury, and not simply placement of funds in the treasury with subsequent administrative allocation to a certain account. L.B. 772 appeared to comply with each element except the time limitation. The need for specific determination of that element's validity is obvious.

B. "Expense"

The initial finding in *Lawrence*, that L.B. 772 was not an appropriation measure, made further analysis unnecessary. The court, however, went on to mention, with regrettable brevity, the terms "expenses," "state government" and "state institutions" in their constitutional context. The discussion of these important terms began with a statement of preference for strict construction of the terms of the appropriation exception. This theory of construction gives broadest effect to the fundamental purpose of the reserved power—to give the people the right to vote on specific legislation.[36] In reference to expenses, the court stated: "[T]he exception should be and must be construed to mean the ordinary running expenses . . . and not to include money or appropriations or funds created or acts which have as their design a new or different scheme for the revenue raising and financing . . . ."[37] *Bartling v. Wait*[38] was cited as authority for this statement. The appellant in that case sought to enjoin a referendum on an act which established an armory for the state militia and provided the funds for its construction. The basis offered for an injunction was that the bill was an appropriation falling within the constitutional exception to the referendum power. After considering the use designated for the funds, the court disagreed and gave the following definition of "expenses:" "[T]he word 'expenses' as used in this section of the constitution must be construed to mean the ordinary running expenses of the state government and existing state institutions, and not to include money to be paid for the erection of new and permanent buildings."[39]

The court in *Lawrence*, in the language noted above,[40] excludes from the meaning of "expenses" an appropriation designed as a different scheme for raising revenue. *Bartling* provides no support for this stance. Significant in determining if an appropriation for expenses exists is the nature of the object of that appropriation, and not the system of funding itself. The drafters of L.B. 772 spe-

36. 192 Neb. at 508, 222 N.W.2d at 810.
37. *Id.* at 508-09, 222 N.W.2d at 810.
38. 96 Neb. 532, 148 N.W. 507 (1914).
39. *Id.* at 538, 148 N.W. at 509.
40. *See* note 37 and accompanying text *supra*.

cifically provided that the funds pay a portion of the "adjusted current operational expenditures"[41] and narrowed the qualifying expenditures to maintenance of existing school facilities and programs.[42] Consideration of the funding system in addition to the object of the expenditures would effectively exclude each novel funding system regardless of its qualification for the exception in every other respect. This judicial limitation on Article III, section 3 violates the established principle of constitutional interpretation recognizing the utility of every clause.[43]

C. "State Government or State Institution"

The interpretation of the term "expenses" necessary in the second step of the suggested analysis was impeded when the *Lawrence* court incorporated in its review elements properly considered in determining compliance under the third step, *i.e.*, whether the expenses were those of the state government or an existing state institution. This final step in determining qualification for the exception to the referendum power requires an investigation of the meaning of the terms "state government" and "state institutions." *Bartling v. Wait*[44] again provides insight. The court was presented with the question of whether the state militia for whom the armory was to be constructed was part of state government or a state institution. It held that the militia was part of state government, citing control of the governor, payment of staff salaries by the state, and statutes governing its organization and administration as evidence of this status. For purposes of the issue in *Lawrence*, the more illuminating discussion pertained to the meaning of "state institution:"

> [T]he words "state institution" in this connection may have two meanings, one the corporate, or in some instances the associated, body which carries on the activities for which it is organized, the other meaning the building or buildings in which that body exercises its proper functions and activities.[45]

The militia could thus be considered a state institution in the sense of an associated body carrying on the activities for which it was

41. L.B. 772 § 4, 83d Neb. Leg. Sess. (1974).
42. Senator Jerome Warner, sponsor of L.B. 772, specifically emphasized this point: "[T]he state does not seek to share all expenses but rather support the day to day cost of administration, salaries, maintenance . . . ." *Hearing on L.B. 772 Before the Comm. on Educ.*, Neb. Legis., 83d Sess. at 5 (1974).
43. Anderson v. Tiemann, 182 Neb. 393, 155 N.W.2d 322 (1967), *appeal dismissed*, 390 U.S. 714 (1968).
44. 96 Neb. 532, 148 N.W. 507 (1914).
45. *Id.* at 537, 148 N.W. at 509.

organized. It is only in this sense that the public school system could have qualified as a state institution following passage and implementation of L.B. 772.

It is clear that the school district has not historically been a part of state government in a formal sense, but rather has been considered a unit of local self-government.[46] It is equally clear that this should not have settled the issue in *Lawrence*. The question of qualification as a state institution remained unanswered by the majority, but was answered in the negative by Judge Newton in his concurring opinion.[47]

The state has historically been charged with the responsibility of providing education for its citizens in general, but especially for its youth. Article VII of the Constitution of Nebraska requires the legislature to provide free instruction in the common schools of the state and establishes an administrative apparatus for the state public school system. This responsibility was noted by the supreme court in *Carlberg v. Metcalfe*.[48] An action was brought to enjoin the city of Omaha from establishing a municipal university authorized by the legislature. The appellant contended that the legislative authorization was unconstitutional because the city had adopted a "home rule" charter, allowing it to operate independently of the state in matters of strictly municipal concern. The court acknowledged that there was no certain test separating state from strictly municipal concerns, but concluded that education was a matter of state concern. This conclusion was based on the constitutional duty imposed by Article VII and the degree of control exercised by the state in the area, such as compulsory education, certification of teachers, and inspection of private schools. The social role of education itself, however, appeared to be the deciding factor: "[education] is preeminently a state affair. The schools, in which are educated the children who are to become in time the directors of our political destinies, are matters of state and not of strictly municipal concern."[49]

The power of the state to delegate the responsibility for performing its governmental duties to agencies created for that pur-

46. *See, e.g.*, Campbell v. Area Vocational Technical School No. 2, 183 Neb. 318, 159 N.W.2d 817 (1968); Schulz v. Dixon County, 134 Neb. 549, 279 N.W. 179 (1938).

47. I wish to point out that under the legislative implementation of the constitutional command to provide for the common schools, local school districts are not part of state government nor are they state institutions within the meaning of the language of Article III, section 3, of the Constitution of Nebraska.
192 Neb. at 509-10, 222 N.W.2d at 811 (1974) (Newton, J. concurring).

48. 120 Neb. 481, 234 N.W. 87 (1930).

49. *Id.* at 488, 234 N.W. at 91.

pose, while retaining absolute power to alter or terminate the relationship, is widely recognized.[50] After the state has created and allocated to the school district the duty of providing education, the district serves as a "governmental subdivision"[51] in performing that duty. "State concern," it should be noted, is not synonymous with "state institution," and the court in *Lawrence* would still have been faced with a difficult question had it systematically analyzed the problem.

Statutory changes can transform an activity traditionally conducted by a local unit of self-government into a state function. The court was recently faced with an analogous issue in *State ex rel. Western Nebraska Technical Community College Area v. Tallon*.[52] The constitutionality of a property tax levy in partial support of the technical community college system was challenged. The state was prohibited from levying a property tax for state purposes,[53] but was not prohibited from requiring a county to levy a tax for substantially local purposes.[54] Traditionally the academic junior colleges were locally controlled and financed by local property taxes on property within the district. In 1965 the legislature permitted establishment of vocational schools on a multi-county area basis. In 1971 all the schools and colleges were placed into a statewide system. A state board was created and given general supervisory powers and control over the system. Area boards were also established and given the power of administrative control of the area institution. Both local and state purposes were served, but the court found the state purpose dominant and held the levy imposed on the counties unconstitutional. The key elements were the degree of control over the statewide system reserved for the state board and the assumption of the primary burden of financial support by the state.

"State purpose," like "state concern," is not synonymous with "state institution." The basic notion of the *Tallon* decision is applicable to bills such as L.B. 772, however. A significant change in the relationship between the state and a governmental subdivision performing delegated duties of state concern may transform a previously local institution into a state institution.[55] The court

50. *See* Hunter v. Pittsburgh, 207 U.S. 161 (1907).
51. Campbell v. Area Vocational Technical School No. 2, 183 Neb. 318, 324, 159 N.W.2d 817, 821 (1968).
52. 192 Neb. 201, 219 N.W.2d 454 (1974).
53. NEB. CONST. art. VIII, § 1A.
54. Craig v. Board of Equalization, 183 Neb. 779, 164 N.W.2d 445 (1969).
55. The significance of such a transformation will extend beyond qualification for the exception to the referendum power. For example, the *Tallon* decision would appear to support a challenge to any remaining

has previously recognized the possibility of such a change.[56] Judge Newton, concurring in *Lawrence*, was correct in stating that the mere fact that an institution is subject to state supervisory control does not make it a state institution. Neither is the matter of control irrelevant. A significant increase in the degree of state control, when combined with other fundamental changes, such as in the level of funding, may alter the nature of an institution. L.B. 772 made a major change in the state funding commitment, but aside from this there were no major structural changes. It is doubtful that this alone is sufficient to establish the public school system as a state institution. Even if it were sufficient, however, there is no question that an act which simultaneously placed a previously local institution in the category of state institution and funded that institution would fail to meet the requirement of funding an institution in existence at the time of the act's passage.[57] L.B. 772 did not appropriate funds for a state institution and thus failed to qualify for the exception to the referendum power.

D. Public Policy Considerations

The language of the *Lawrence* decision raises an additional problem of interpretation. It should not be a prerequisite to finding a measure which qualifies for the exception that the court face "a case of the defeat of an appropriation for a specific sum of money that would destroy the operation of the fundamental functions . . ."[58] of state government or institutions. If the act is an appropriation measure, as defined by the court, for the ordinary expenses of state government or a state institution, it should qualify for the exception to the referendum power regardless of whether an alternative funding source exists. Only if the court is unable to respond to the three suggested cumulative questions should it turn to bal-

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property tax levy for the public school system as a state institution. The school system, with its institution status, would arguably serve a state rather than a substantially local purpose, thus making a property tax levy for its support unconstitutional. NEB. CONST. art. VIII, § 1A. This would eliminate the possibility of a gradual change to total financing by revenue from the sales and income tax, as envisioned by the drafters of L.B. 772.

56. In Carlberg v. Metcalfe, 120 Neb. 481, 234 N.W. 87 (1930), the court quoted with approval from Helmer v. Superior Court, 48 Cal. App. 140, 141-42, 191 P. 1001 (1920), while referring to the distinction between "state" and "strictly municipal" affairs: "The term 'municipal affairs' is not a fixed quantity, but fluctuates with every change in the conditions upon which it is to operate." *Id.* at 487, 234 N.W. at 90.
57. NEB. CONST. art. III, § 3.
58. 192 Neb. at 509, 222 N.W.2d at 811.

ancing the basic purpose of the referendum, *i.e.*, to give the people the right to vote on specific legislation, against the purpose of the exception for appropriation measures, *i.e.*, to prevent the crippling effect on state government or institutions of uncertainty and delay in their financial affairs.[59] Incorporation of this consideration in the court's initial analysis distorts the issue. If the measure otherwise qualifies for the exception it should be exempt from the referendum process regardless of whether its possible rejection endangers state government or institutions.[60]

III. CONCLUSION

Critics of the referendum process might feel vindicated to some degree by the sound rejection of L.B. 772 in the November 1974 general election.[61] The implications of *Lawrence* were emphasized by this result. Legislators intent on passing innovative funding measures face the prospect of a referendum, and drafters must place the provisions of each act within the narrow exception of Article III, section 3 if they wish to avoid this possibility.

The courts also face a difficult decision when the question of compliance with the exception is raised. The method of analysis suggested by the appellant in *Lawrence* and considered here offers an orderly framework for making the decision. It is essential that the court remain aware that traditional meanings assigned to terms, such as "state institution," may be rendered obsolete by substantial legislative changes. Flexibility in reviewing the traditional meanings of these terms is necessary to effectuate the exception to the referendum power. Each innovative funding measure introduced in the Legislature presents a potential challenge to that flexibility. L.B. 772 was correctly submitted to referendum, but a clearer articulation of the considerations involved in qualifying for the constitutional exception is needed. The exception will continue to be of doubtful practical significance until its perimeters are more fully outlined.

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59. Bartling v. Wait, 96 Neb. 532, 148 N.W. 507 (1914).
60. *Cf.* State *ex rel.* Morris v. Marsh, 183 Neb. 521, 545-46, 162 N.W.2d 262, 276-77 (1968) (dissenting opinion).
61. L.B. 772 appeared on the ballot as Proposition 300 and was defeated by a vote of 177,704 in favor, and 250,908 against.